

OGC 72-0182

10 February 1972

MEMORANDUM FOR THE RECORD

SUBJECT: War Powers Legislation (S. 2956) and the Case Bill (S. 596)

1. Talked to Mr. Charles N. Brower, Deputy Legal Adviser, Department of State, on his letters of 31 January 1972 and 4 February 1972 to Mr. Maury with copies to Mr. Houston.

2. The 4 February letter asked for our comments on the draft strategy paper on War Powers Legislation, principally S. 2956. I advised Mr. Brower that we did not believe we had any concern with these matters and, therefore, were not commenting.

3. On the 31 January letter which involved the Case bill (S. 596), I advised we would like a change in the provisional outline of procedure for informing Congress of international agreements other than treaties. Specifically, on page 2 of paragraph (c), in the first sentence, the words "gathering and sharing" should be deleted. I stated we would like to make the sentence somewhat more general and, furthermore, in many cases, understandings relating to intelligence gathering and sharing would not be, in our minds, an international agreement. Mr. Brower seemed to understand this and referred to some previous discussions wherein this point had been raised. I attempted to make it very clear that there were a great number of arrangements that this Agency had in the intelligence area that we did not construe to be international agreements within the meaning of S. 596. Mr. Brower was appreciative of our comments.

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JOHN S. WARNER
Deputy General Counsel

cc: Legislative Counsel



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DEPARTMENT OF STATE

Washington, D.C. 20520

February 11, 1972

Mr. John M. Maury
Legislative Counsel
Central Intelligence Agency
Washington, D.C.

Dear Mr. Maury:

With regard to my letter of January 31, 1972
I enclose a revised page 3 to be inserted in the
"Provisional Outline of Procedure for Informing
Congress of International Agreements Other Than
Treaties."

I also enclose a copy of new page 4a to be
inserted in the war powers strategy paper transmitted
to you by letter of February 4.

Yours sincerely,

Charles N. Brower
Deputy Legal Adviser

Enclosures

cc: Mr. Lawrence R. Houston
General Counsel
Central Intelligence Agency

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-2-

There will have to be some understanding regarding measures which the Committees will take for the safeguarding of texts in their possession. This will include both physical security and access limitations as well as security clearance for staff members.

(b) Congress informed.

There will be a certain number of agreements of which the Committees may be informed but the details of which will be so sensitive that we will not wish to have texts in the physical possession of the Committees at any time. In these cases, the Department of State will insure that the committee chairmen are regularly informed of such agreements within 60 days of their conclusion. Within this category, a decision will have to be made on a case-by-case basis as to whether we should decline even to make the text available for inspection by members of the Committee.

(c) Congress not informed.

In discussing the foregoing procedures with the Committee and its staff, we will indicate that there may in very rare instances be agreements of which Congress is not informed, particularly in the area of intelligence. We will state that decisions not to inform Congress will be made only with the approval of the President.

III. Executive Branch Procedures.

The following procedures will be used in determining which unpublished agreements fall within each of the categories

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DEPARTMENT OF STATE

Washington, D.C. 20520

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January 31, 1972

Mr. John M. Maury
Legislative Counsel
Central Intelligence Agency
Washington, D. C.

Dear Mr. Maury:

Following up the January 26 LIG meeting discussion of the Case Bill (S. 596), I enclose for your consideration a "Provisional Outline of Procedure for Informing Congress of International Agreements Other Than Treaties." This is the same outline of "practical procedures" which was reviewed at the time the Case Bill was still pending in Committee.

So that we may proceed as quickly as possible to offer, and, if they are accepted, implement such practical procedures, I would appreciate receiving your comments, in writing or by telephone, at the earliest possible opportunity. If desirable, I would be glad to arrange for an early meeting of those concerned so that we may move forward.

I will look forward to hearing from you.

Yours sincerely,

Charles N. Brower

Charles N. Brower
Deputy Legal Adviser

Enclosure

cc: Mr. Lawrence R. Houston
General Counsel
Central Intelligence Agency

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January 28, 1972

Provisional Outline of Procedure for Informing
Congress of International Agreements Other
Than Treaties

The following is a general summary of a possible procedure designed to keep Congress (through the Senate Foreign Relations and House Foreign Affairs Committees) regularly informed of the conclusion of international agreements other than treaties.

I. Published Agreements.

Copies of agreements published in the Treaties and Other International Acts Series are forwarded directly from the Government Printing Office to the document rooms of the Senate and the House as well as to the Senate and House Libraries and to the Library of Congress. It does not seem necessary to duplicate this procedure by transmitting copies from the Department of State to Congress, but the Department would be willing to undertake to do so should the Committees so desire.

II. Unpublished Agreements.

(a) Text transmitted to Congress. The Department of State will transmit the texts of most unpublished agreements to the Committees within 60 days of their conclusion and as soon as documentation is completed.

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-2-

There will have to be some understanding regarding measures which the Committees will take for the safeguarding of texts in their possession. This will include both physical security and access limitations as well as security clearance for staff members.

(b) Congress informed.

There will be a certain number of agreements of which the Committees may be informed but the details of which will be so sensitive that we will not wish to have texts in the physical possession of the Committees at any time. In these cases, the Department of State will insure that the committee chairmen are regularly informed of such agreements within 60 days of their conclusion. Within this category, a decision will have to be made on a case by case basis as to whether we should decline even to make the text available for inspection by members of the Committee.

(c) Congress not informed.

In discussing the foregoing procedures with the Committee and its staff, we will indicate that there may in very rare instances be agreements of which Congress is not informed, particularly in the area of intelligence ~~gathering and sharing~~. We will state that decisions not to inform Congress will be made only with the approval of the President.

III. Executive Branch Procedures.

The following procedures will be used in determining which unpublished agreements fall within each of the categories

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-3-

described in II above.

(a) The unpublished agreements presently in force would be reviewed by the Department of State in consultation with other interested Departments and agencies. A decision would be made on the handling of agreements in one of the three categories. In the event of disagreement between the Secretary of State and the head of another interested Department or agency regarding treatment of particular agreements, the issue will be referred to the President for decision.

(b) As future unpublished agreements are concluded, they will be reviewed by the Department of State with appropriate consultations. A decision would be made on the handling of agreements in one of the three categories. In the event of disagreement on the treatment of particular agreements, that disagreement would be referred to the President for decision.

(c) A decision not to inform the Congress at all of the existence of an international agreement should be made only with the approval of the President.

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JMM:

Warner has closed out the two letters sent to you and Houston jointly on the International Agreements and War Powers bills.

We supported the position taken by Warner in both instances.

No further action needed.

LLM

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